

Introduced by Senator Ducheny

February 22, 2005

An act to amend Sections 11999.5, 11999.6, and 11999.9 of the Health and Safety Code, and to amend Sections 1210 and 1210.1 of the Penal Code, relating to drug treatment, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as introduced, Ducheny. Ongoing Substance Abuse and Crime Prevention Act of 2005.

Existing law, the Substance Abuse and Crime Prevention Act of 2000, was enacted by the voters at the November 2000 general election. Amendment of the act by the Legislature requires a 2/3 vote of both houses of the Legislature. The act requires all amendments to it to further the act and be consistent with its purposes. The act defines "drug treatment program" for purposes of the act, and specifically excludes in-custody drug treatment from that definition.

This bill would include in that definition an in-custody drug treatment and education program.

The act defines "successful completion of treatment" as a defendant who has completed the prescribed course of treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

This bill would instead define "successful completion of treatment" as a defendant who has completed the prescribed course of treatment and has continued thereafter to refrain from the use of drugs during the period of probation.

The act requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, the court is required to require a defendant to participate in, and

complete, an appropriate drug treatment program. The act prohibits the imposition of incarceration as a condition of probation.

This bill would require drug testing as a condition of probation, and would authorize a court to order a limited sentence of incarceration in a county jail, as specified. The bill would require a person subject to the act to be monitored by the court, as specified, with a regimen of graduated sanctions.

The act does not apply to a defendant who has been convicted of one or more serious or violent felonies, unless the nonviolent drug possession offense occurred more than 5 years after the defendant was free from custody for the prior offense and from the commission of other types of crimes against a person.

This bill would add the condition that the court finds that the defendant does not pose a threat to the community and would benefit from a drug treatment program, and would prohibit a person who has previously served 3 separate prison terms for non drug-related felonies from benefitting from the provisions of the bill, unless the court makes that finding.

The act does not apply to any defendant who, while using a firearm unlawfully possesses or is unlawfully under the influence of certain controlled substances.

This bill would instead make its provisions inapplicable to any defendant who, while armed with a deadly weapon unlawfully possesses or is under the influence of certain controlled substances.

Under the act, a defendant may petition the sentencing court for dismissal of the charges at any time after completion of drug treatment.

This bill would authorize a defendant to petition the court for dismissal of the charges after completion of drug treatment and all other terms of probation.

Under the act, once the indictment, complaint, or information is dismissed, a record pertaining to the arrest and conviction for that offense may not be used to deny the defendant employment.

This bill would except employment in a position that involves the safety of the public from that provision.

Under the act, if a defendant violates probation, as specified, the court may revoke probation or it may intensify or alter the drug treatment plan.

This bill would authorize a court to also order incarceration for a specified period, in order to enhance treatment compliance, and in

some circumstances, to order the defendant to complete an in-custody drug treatment program.

The act appropriates \$60,000,000 per year for purposes of the act, through the 2005-06 fiscal year. The act prohibits money appropriated for its purposes to be used for drug testing.

This bill would appropriate \$150,000,000 per year through the 2010-11 fiscal year. The bill would authorize money appropriated for its purposes to be used for mandatory drug testing.

Existing law requires an annual study to evaluate the effectiveness of the act.

This bill would change the items to be included in that study.

Because the bill would increase punishment for crimes, including authorizing jail time, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) This act shall be known and may be cited as
2 the Ongoing Substance Abuse and Crime Prevention Act of
3 2005.

4 (b) The Legislature finds and declares all of the followings:

5 (1) The people of the State of California voted to approve
6 Proposition 36, the Substance Abuse and Crime Prevention Act
7 of 2000, in the November 2000 general election. The voters
8 declared their intent in that act to do all of the following:

9 (A) Divert from incarceration into community-based substance
10 abuse treatment programs nonviolent defendants, probationers
11 and parolees charged with simple drug possession or drug use
12 offenses.

13 (B) Halt the wasteful expenditure of hundreds of millions of
14 dollars each year on the incarceration and reincarceration of

1 nonviolent drug users who would be better served by
2 community-based treatment.

3 (C) Enhance public safety by reducing drug-related crime and
4 preserving jails and prison cells for serious and violent offenders,
5 and to improve public health by reducing drug abuse and drug
6 dependence through proven and effective drug treatment
7 strategies.

8 (c) Based on the experience in the implementation of the
9 Substance Abuse and Crime Prevention Act of 2000, the
10 evidence demonstrates all of the following:

11 (1) Drug dependent criminal offenders who receive drug
12 treatment are far more likely to stop the abuse of drugs and
13 commission of future crimes, as well as lead healthier, more
14 stable and more productive lives, if they in fact successfully
15 complete the required drug treatment program.

16 (2) Drug dependent criminal offenders who receive drug
17 treatment are far more likely to complete the drug treatment
18 program if they are monitored and supervised by courts that use
19 the drug court model through dedicated calendars and include a
20 regimen of graduated sanctions and rewards, close collaboration
21 between the court, treatment providers and probation, drug
22 testing commensurate with treatment needs, and appropriate
23 court monitoring and supervision of progress through frequent
24 review hearings.

25 (3) Drug dependent criminal offenders who are unable to
26 succeed in community treatment and remain drug and crime free
27 while on probation will benefit from structured jail treatment
28 programs followed by a return to community treatment. Evidence
29 also demonstrates that incarceration is an effective tool in both
30 treatment and prevention.

31 (4) The costs of treatment, probation supervision, court
32 monitoring, and drug testing for the substantial number of
33 eligible defendants sentenced under that act is one hundred fifty
34 million dollars (\$150,000,000) per year.

35 (d) Using the drug court model through the Drug Court
36 Partnership Act of 1998 (Sec. 11970, H.& S.C.) and the
37 Comprehensive Drug Court Implementation Act of 1999 (Sec.
38 11970.1, H.& S.C.) has resulted in a reduction in the
39 expenditures each year of state and county funding for the
40 incarceration and reincarceration of nonviolent drug users who

would be better served by drug court supervised community treatment. This model should be utilized for defendants sentenced under the Substance Abuse and Crime Prevention Act of 2000 as well.

(e) Mandatory drug testing and the reporting of drug test results to the court serves as an effective treatment tool in determining the appropriate treatment program for the defendant, enables the court to hold the defendant accountable to refrain from the continued use of drugs, and enhances public safety.

SEC. 2. Section 11999.5 of the Health and Safety Code is amended to read:

~~11999.5. Funding Appropriation~~

Upon passage of this act, \$60,000,000 shall be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2000–01 fiscal year. There is hereby continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund an additional \$120,000,000 for the 2001–02 fiscal year, ~~and an additional sum of \$120,000,000 for each such subsequent fiscal year concluding with~~ *until the 2005–06 fiscal year, an additional sum of one hundred fifty million dollars (\$150,000,000) for the 2006-07 fiscal year, and an additional sum of one hundred fifty million dollars (\$150,000,000) in each subsequent fiscal year, until the 2010-11 fiscal year.* These funds shall be transferred to the Substance Abuse Treatment Trust Fund on July 1 of each of these specified fiscal years. Funds transferred to the Substance Abuse Treatment Trust Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Substance Abuse Treatment Trust Fund.

SEC. 3. Section 11999.6 of the Health and Safety Code is amended to read:

~~11999.6. Distribution of Monies from Substance Abuse Treatment Trust Fund~~

Monies deposited in the Substance Abuse Treatment Trust Fund shall be distributed annually by the Secretary of the Health and Human Services Agency through the State Department of Alcohol and Drug Programs to counties to cover the costs of placing persons in and providing ~~(a)~~ drug treatment programs under this act, and ~~(b)~~ vocational training, family counseling and

1 literacy training under this act. Additional costs that may be
2 reimbursed from the Substance Abuse Treatment Trust Fund
3 include probation department costs, court monitoring costs and
4 any miscellaneous costs made necessary by the provisions of this
5 act ~~other than, including mandatory drug testing services of any~~
6 ~~kind. Such.~~ Those monies shall be allocated to counties through a
7 fair and equitable distribution formula that includes, but is not
8 limited to, per capita arrests for controlled substance possession
9 violations and substance abuse treatment caseload, as determined
10 by the department as necessary to carry out the purposes of this
11 act. The department may reserve a portion of the fund to pay for
12 direct contracts with drug treatment service providers in counties
13 or areas in which the director of the department has determined
14 that demand for drug treatment services is not adequately met by
15 existing programs. However, nothing in this section shall be
16 interpreted or construed to allow any entity to use funds from the
17 Substance Abuse Treatment Trust Fund to supplant funds from
18 any existing fund source or mechanism currently used to provide
19 substance abuse treatment.

20 SEC. 4. Section 11999.9 of the Health and Safety Code is
21 amended to read:

22 11999.9. ~~Annual Evaluation Process~~

23 The department shall annually conduct a study to evaluate the
24 effectiveness and financial impact of the programs that are
25 funded pursuant to the requirements of this act. The study shall
26 ~~include, but not be limited to, a study of the implementation~~
27 ~~process, a review of lower incarceration costs, reductions in~~
28 ~~crime, reduced prison and jail construction, reduced welfare~~
29 ~~costs, the adequacy of funds appropriated, and any other impacts~~
30 ~~or issues the department can identify~~ *criminal justice statistical*
31 *data on rearrests and convictions of defendants after their*
32 *sentencing under this act by crime type, as well as the impact, if*
33 *any, of the programs on statewide crime trends, actual prison*
34 *bed days saved and jail bed days saved as a result of the*
35 *programs funded under this act, the adequacy of funds*
36 *appropriated, and any other impacts or issues the department*
37 *can identify that specifically relate to the reduction of crime and*
38 *direct savings in prison and jail costs, as well as local law*
39 *enforcement, court, court-related, custody administration, and*
40 *other criminal justice costs.*

SEC. 5. Section 1210 of the Penal Code is amended to read:

1210. ~~Definitions~~

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, *the following definitions apply*:

(a) The term “nonviolent drug possession offense” means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term “nonviolent drug possession offense” does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term “drug treatment program” or “drug treatment” means a state licensed ~~and/or~~ or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence, *or an in-custody drug treatment and education program in a county jail*. The term “drug treatment program” or “drug treatment” includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001; ~~such a. That type of~~ program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. ~~The term “drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.~~

(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, ~~as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future~~ *has continued thereafter to refrain from the use of drugs during the period of probation.*

(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 6. Section 1210.1 of the Penal Code is amended to read:

~~1210.1. Possession of Controlled Substances; Probation; Exceptions~~

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation, the court shall require participation in and completion of an appropriate drug treatment program, *and mandatory drug testing*. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service, *or participation in an in-custody treatment and education program in a county jail*. A court may ~~not impose incarceration as an additional condition of probation~~ *order a limited sentence of incarceration in a county jail for the sole purpose of enhancing treatment compliance by the defendant, consistent with the drug court model*. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation ~~shall~~ *may* be imposed by suspending the imposition of sentence.

A person who is convicted of, and placed on probation for, a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a drug court model of oversight that includes a regimen of graduated sanctions and rewards, close collaboration with treatment providers and probation, drug testing commensurate with treatment needs and appropriate court monitoring and supervision of progress through frequent review hearings.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:

1 (1) Any defendant who previously has been convicted of one
2 or more serious or violent felonies ~~in violation of~~ *as defined in*
3 subdivision (c) of Section 667.5 or *subdivision (c) of* Section
4 1192.7, unless the nonviolent drug possession offense occurred
5 after a period of five years in which the defendant remained free
6 of both prison custody and the commission of an offense that
7 results in ~~(A)~~ a felony conviction other than a nonviolent drug
8 possession offense, or ~~(B)~~ a misdemeanor conviction involving
9 physical injury or the threat of physical injury to another person,
10 *and the court finds that the defendant does not pose a risk to the*
11 *community and would benefit from a drug treatment program.*

12 (2) *Any defendant who has previously been convicted of three*
13 *nondrug related felonies and has served three separate prison*
14 *terms within the meaning of subdivision (b) of Section 667.5 of*
15 *the Penal Code, unless the court finds that the defendant does not*
16 *pose a risk to the community and would benefit from a drug*
17 *treatment program.*

18 (3) Any defendant who, in addition to one or more nonviolent
19 drug possession offenses, has been convicted in the same
20 proceeding of a misdemeanor not related to the use of drugs or
21 any felony.

22 ~~(3)–~~
23 (4) Any defendant who:
24 ~~(A) While using a firearm, unlawfully possesses any amount~~
25 ~~of (i) a substance containing either cocaine base, cocaine, heroin,~~
26 ~~methamphetamine, or (ii) a liquid, nonliquid, plant substance, or~~
27 ~~hand-rolled cigarette, containing phencyclidine.~~

28 ~~(B) While using a firearm, is unlawfully under the influence of~~
29 ~~cocaine base, cocaine, heroin, methamphetamine or~~
30 ~~phencyclidine.~~

31 ~~(4)–~~, while armed with a deadly weapon unlawfully possesses,
32 or is under the influence of, any controlled substance identified
33 in Section 11054, 11055, 11056, 11057, or 11058 of the Health
34 and Safety Code.

35 (5) Any defendant who refuses drug treatment as a condition
36 of probation.

37 ~~(5)–~~
38 (6) Any defendant who ~~(A)~~ has two separate convictions for
39 nonviolent drug possession offenses, ~~(B)~~ has participated in two
40 separate courses of drug treatment pursuant to subdivision (a),

1 and ~~(C)~~ is found by the court, by clear and convincing evidence,
2 to be unamenable to any and all forms of available drug
3 treatment, *as defined in subdivision (b) of Section 1210*.
4 Notwithstanding any other provision of law, the trial court shall
5 sentence ~~such~~ those defendants to 30 days in jail.

6 (c) Within seven days of an order imposing probation under
7 subdivision (a), the probation department shall notify the drug
8 treatment provider designated to provide drug treatment under
9 subdivision (a). Within 30 days of receiving that notice, the
10 treatment provider shall prepare a treatment plan and forward it
11 to the probation department. ~~On a quarterly basis after the~~
12 ~~defendant begins the drug treatment program, the treatment~~
13 ~~provider shall prepare and forward a progress report on the~~
14 ~~individual probationer to the probation department. The~~
15 *treatment provider shall provide treatment progress reports*
16 *including all drug testing results to the court or probation*
17 *department, or both, as the court directs, for consideration by the*
18 *court at each review hearing.*

19 (1) If at any point during the course of drug treatment the
20 treatment provider notifies the probation department *or the court*
21 that the defendant is unamenable to the drug treatment being
22 provided, but may be amenable to other drug treatments or
23 related programs, the probation department may move the court
24 to modify the terms of probation to ensure that the defendant
25 receives the alternative drug treatment or program.

26 (2) If at any point during the course of drug treatment the
27 treatment provider notifies the probation department *and the*
28 *court* that the defendant is unamenable to the drug treatment
29 provided and all other forms of drug treatment programs pursuant
30 to subdivision (b) of Section 1210, the probation department may
31 move to revoke probation. At the revocation hearing, if it is
32 proved that the defendant is unamenable to all drug treatment
33 programs pursuant to subdivision (b) of Section 1210, the court
34 may revoke probation.

35 (3) Drug treatment services provided by subdivision (a) as a
36 required condition of probation may not exceed ~~12~~ 24 months,
37 provided, however, that additional aftercare services as a
38 condition of probation may be required for up to six months.

39 ~~(d) Dismissal of charges upon successful completion of drug~~
40 ~~treatment~~

(1) At any time after completion of drug treatment *and the terms of probation*, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate, *except for employment in a position that involves the safety of the public*.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830 *or other position that involves the safety of the public*, for licensure by any state or local agency, for

1 contracting with the California State Lottery, or for purposes of
2 serving on a jury.

3 ~~(e) Violation of probation~~

4 (1) If probation is revoked pursuant to the provisions of this
5 subdivision, the defendant may be incarcerated pursuant to
6 otherwise applicable law without regard to the provisions of this
7 section.

8 ~~(2) Non-drug-related probation violations~~

9 If a defendant receives probation under subdivision (a), and
10 violates that probation either by being arrested for an offense that
11 is not a nonviolent drug possession offense, or by violating a
12 non-drug-related condition of probation, and the state moves to
13 revoke probation, the court shall conduct a hearing to determine
14 whether probation shall be revoked. The court may modify or
15 revoke probation if the alleged violation is proved.

16 ~~(3) Drug-related probation violations~~

17 (A) If a defendant receives probation under subdivision (a),
18 and violates that probation either by committing a nonviolent
19 drug possession offense, or a misdemeanor for simple possession
20 or use of drugs or drug paraphernalia, being present where drugs
21 are used, or failure to register as a drug offender, or any activity
22 similar to those listed in paragraph (1) of subdivision (d) of
23 Section 1210, or by violating a drug-related condition of
24 probation, and the state moves to revoke probation, the court
25 shall conduct a hearing to determine whether probation shall be
26 revoked. The trial court shall revoke probation if the alleged
27 probation violation is proved and the state proves by a
28 preponderance of the evidence that the defendant poses a danger
29 to the safety of others. If the court does not revoke probation, it
30 may intensify or alter the drug treatment plan, *and may, in*
31 *addition, order incarceration in a county jail for not more than*
32 *seven days as a treatment tool under the drug court model, in*
33 *order to enhance treatment compliance.*

34 (B) If a defendant receives probation under subdivision (a),
35 and for the second time violates that probation either by
36 committing a nonviolent drug possession offense, or a
37 misdemeanor for simple possession or use of drugs or drug
38 paraphernalia, being present where drugs are used, or failure to
39 register as a drug offender, or any activity similar to those listed
40 in paragraph (1) of subdivision (d) of Section 1210, or by

1 violating a drug-related condition of probation, and the state
 2 moves for a second time to revoke probation, the court shall
 3 conduct a hearing to determine whether probation shall be
 4 revoked. The trial court shall revoke probation if the alleged
 5 probation violation is proved and the state proves by a
 6 preponderance of the evidence either that the defendant poses a
 7 danger to the safety of others or is unamenable to drug treatment.
 8 In determining whether a defendant is unamenable to drug
 9 treatment, the court may consider, to the extent relevant, whether
 10 the defendant (i) has committed a serious violation of rules at the
 11 drug treatment program, (ii) has repeatedly committed violations
 12 of program rules that inhibit the defendant's ability to function in
 13 the program, or (iii) has continually refused to participate in the
 14 program or asked to be removed from the program. If the court
 15 does not revoke probation, it may intensify or alter the drug
 16 treatment plan, *and may, in addition, order incarceration in a*
 17 *county jail for not more than 14 days as a treatment tool under*
 18 *the drug court model, in order to enhance treatment compliance.*
 19 *In the alternative, the court may require the defendant to*
 20 *successfully complete an in-custody treatment program*

21 (C) If a defendant receives probation under subdivision (a),
 22 and for the third *or subsequent* time violates that probation either
 23 by committing a nonviolent drug possession offense, or by
 24 violating a drug-related condition of probation, and the state
 25 moves for a third *or subsequent* time to revoke probation, the
 26 court shall conduct a hearing to determine whether probation
 27 shall be revoked. If the alleged probation violation is proved, the
 28 defendant is not eligible for continued probation under
 29 subdivision (a), *and the court may impose a sentence, unless the*
 30 *court determines that the defendant would benefit from further*
 31 *treatment under subdivision (a) and intensifies or alters the*
 32 *treatment plan. If the court continues the defendant in treatment,*
 33 *the court may transfer the defendant to a highly structured drug*
 34 *court that may include the requirement that the defendant*
 35 *complete an in-custody treatment program.*

36 (D) If a defendant on probation at the effective date of this act
 37 for a nonviolent drug possession offense violates that probation
 38 either by being arrested for a nonviolent drug possession offense,
 39 or a misdemeanor for simple possession or use of drugs or drug
 40 paraphernalia, being present where drugs are used, or failure to

1 register as a drug offender, or any activity similar to those listed
2 in paragraph (1) of subdivision (d) of Section 1210, or by
3 violating a drug-related condition of probation, and the state
4 moves to revoke probation, the court shall conduct a hearing to
5 determine whether probation shall be revoked. The trial court
6 shall revoke probation if the alleged probation violation is proved
7 and the state proves by a preponderance of the evidence that the
8 defendant poses a danger to the safety of others. If the court does
9 not revoke probation, it may modify probation and impose as an
10 additional condition participation in a drug treatment program,
11 *and may, in addition, order incarceration in a county jail for not*
12 *more than seven days as a treatment tool under the drug court*
13 *model, in order to enhance treatment compliance.*

14 (E) If a defendant on probation at the effective date of this act
15 for a nonviolent drug possession offense violates that probation a
16 second time either by being arrested for a nonviolent drug
17 possession offense, or a misdemeanor for simple possession or
18 use of drugs or drug paraphernalia, being present where drugs are
19 used, or failure to register as a drug offender, or any activity
20 similar to those listed in paragraph (1) of subdivision (d) of
21 Section 1210, or by violating a drug-related condition of
22 probation, and the state moves for a second time to revoke
23 probation, the court shall conduct a hearing to determine whether
24 probation shall be revoked. The trial court shall revoke probation
25 if the alleged probation violation is proved and the state proves
26 by a preponderance of the evidence either that the defendant
27 poses a danger to the safety of others or that the defendant is
28 unamenable to drug treatment. If the court does not revoke
29 probation, it may modify probation and impose as an additional
30 condition participation in a drug treatment program, *and may, in*
31 *addition, order incarceration in a county jail for not more than*
32 *14 days as a treatment tool under the drug court model, in order*
33 *to enhance treatment compliance. In the alternative, the court*
34 *may require the defendant to successfully complete an in-custody*
35 *treatment program.*

36 (F) If a defendant on probation at the effective date of this act
37 for a nonviolent drug offense violates that probation a third time
38 either by being arrested for a nonviolent drug possession offense,
39 or by violating a drug-related condition of probation, and the
40 state moves for a third time to revoke probation, the court shall

1 conduct a hearing to determine whether probation shall be
2 revoked. If the alleged probation violation is proved, the
3 defendant is not eligible for continued probation under
4 subdivision (a), *and the court may impose a sentence, unless the*
5 *court determines that the defendant would benefit from further*
6 *treatment under subdivision (a) and intensifies or alters the*
7 *treatment plan. If the court continues the defendant in treatment,*
8 *the court may transfer the defendant to a highly structured drug*
9 *court that may include the requirement that the defendant*
10 *complete an in-custody treatment program.*

11 (f) The term “drug-related condition of probation” shall
12 include a probationer’s specific drug treatment regimen,
13 employment, vocational training, educational programs,
14 psychological counseling, and family counseling.

15 SEC. 7. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the
20 penalty for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition of a
22 crime within the meaning of Section 6 of Article XIII B of the
23 California Constitution.